

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

SHAWNA C. MITCHELL,

Plaintiff,

vs.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 06:12-cv-01062-HU

ORDER FOR EAJA FEES

Richard F. McGinty
P.O. Box 12806
Salem, OR 97309

Attorney for Plaintiff

S. Amanda Marshall
United States Attorney
Adrian L. Brown
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204-2904

David Morado
Regional Chief Counsel, Region X, Seattle
Nancy A. Mishalanie
Special Assistant United States Attorney
Office of the General Counsel
Social Security Administration
701 Fifth Avenue, Suite #2900 M/S 901
Seattle, WA 98104-7075

Attorneys for Defendant

1 SIMON, United States District Judge:

2 In this case, the plaintiff Shawna C. Mitchell sought judicial
3 review of the Commissioner's decision denying her applications for
4 Disability Insurance benefits under Title II of the Social Security
5 Act, 42 U.S.C. § 1381 *et seq.*, and Supplemental Security Income
6 benefits under Title XVI of the Act. The administrative record was
7 a relatively short 531 pages. Mitchell filed a seventeen-page
8 opening brief, raising three assertions of error by the Administra-
9 tive Law Judge ("ALJ"). In response, the Commissioner filed a
10 motion to remand, noting the ALJ had failed to resolve an issue
11 raised by the medical expert in the case. Mitchell argued any
12 remand should be for calculation and payment of benefits, rather
13 than further proceedings, but if the court did order remand for
14 further proceedings, then the court's instructions to the ALJ
15 should be more specific than the Commissioner's suggestion. Judge
16 Hubel recommended remand for further proceedings, and made specific
17 suggestions regarding what those proceedings should include, and
18 the time limit within which they should be completed.
19 Neither party objected, and on March 24, 2014, I remanded the case.

20 Mitchell's attorney Richard McGinty filed a motion for
21 attorney's fees in the amount of \$8,197.86, under the Equal Access
22 to Justice Act ("EAJA"), 28 U.S.C. § 2412, subject to any offset as
23 described in *Astrue v. Ratliff*, 560 U.S. 586, 130 S. Ct. 2521, 177
24 L. Ed. 2d 91 (2010). Mr. McGinty noted the Commissioner planned to
25 oppose the motion. Dkt. #26. Thereafter, the parties continued to
26 negotiate, and they now have filed a stipulated motion requesting
27 an award of \$6,000 in EAJA fees for Mr. McGinty. Mr. McGinty has
28 submitted time records (Dkt. #27-2) indicating he expended a total

1 of 44.1 hours on this case, which I note slightly exceeds the
2 twenty-to-forty-hour range Judge Mosman found to be a "reasonable
3 amount of time to spend on a social security case that does not
4 present particular difficulty." *Harden v. Comm'r*, 497 F. Supp. 2d
5 1214, 1215 (D. Or. 2007) (noting "some consensus among the district
6 courts" on this point; citing cases).

7 Adjusting the EAJA statutory fee of \$125 per hour using the
8 Ninth Circuit's formula for cost-of-living adjustments, see
9 *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (citing
10 *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005));
11 *Jones v. Espy*, 10 F.3d 690, 692-93 (9th Cir. 1993); the EAJA-
12 adjusted hourly rate for 2012 is \$184.32, for 2013 is \$187.02, and
13 for May 2014 is \$188.04. Multiplying counsel's hours for the
14 respective years results in attorney fees of \$3,520.51¹ for 2012
15 (19.1 x \$184.32); \$3,759.10 for 2013 (20.1 x \$187.02); and \$921.40²
16 for 2014 (4.9 x \$188.04); for a total of \$8,201.01 (\$2,201.01 more
17 than the amount to which the parties have stipulated).

18 I find that the stipulated fee of \$6,000.00 is reasonable
19 under the circumstances, and **grant** the parties' motion. Mitchell
20 is awarded the sum of **\$6,000.00** in attorney's fees under the EAJA.
21 If Mitchell's EAJA fees are not subject to any offset allowed under
22 the Department of the Treasury's Offset Program pursuant to
23 *Ratliff*, then the check for EAJA fees shall be made payable to
24

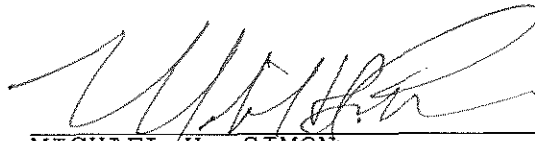
25 ¹Mr. McGinty multiplied 19.1 hours x \$184.32, and mistakenly
26 arrived at a 2012 total of \$3,522.36. Dkt. #27-2, p. 1.

27 ²This figure differs from Mr. McGinty's calculation because he
28 used the 2013 EAJA-adjusted rate, rather than the most recent 2014
rate. See Dkt. #27-2, p. 2.

1 Mitchell's attorney Richard F. McGinty, based on Mitchell's
2 assignment of such fees to her attorney. See Dkt. #27-1, p. 2.
3 Any check for EAJA fees shall be mailed directly to Mitchell's
4 attorney Richard F. McGinty at P.O. Box 12806, Salem, Oregon 97309-
5 0806.

6 IT IS SO ORDERED.

7 Dated this 18th day of July, 2014.

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11 MICHAEL H. SIMON
12 United States District Judge
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